

Message Text

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ORIGIN EB-07

INFO OCT-01 AF-06 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

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FM SECSTATE WASHDC

TO AMEMBASSY LAGOS

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E.O. 11652:N/A

TAGS:EAIR, NI

SUBJECT:CIVAIR: AIR NIGERIA PERMIT RENEWAL

REF: CAHILL LETTER OF SEPTEMBER 4, 1975

1. EMBASSY MAY DRAW ON FOLLOWING IN RESPONDING TO ANY
NIGERIAN QUERIES RE NIGERIA AIRWAYS' US PERMIT RENEWAL:

IN JUNE 1972 US AUTHORITIES ISSUED TO NIGERIA AIRWAYS A
THREE YEAR FOREIGN AIR CARRIER PERMIT TO OPERATE AIR
SERVICES BETWEEN LAGOS AND NEW YORK VIA CERTAIN INTER-
MEDIATE POINTS IN WEST AFRICA. IT IS ENVISAGED THAT THE
AIRLINES' US OPERATIONS ARE TO BE CONDUCTED IN ACCORDANCE
WITH A BLOCKED SPACE ARRANGEMENT WITH PAN AM. THE PERMIT
IS NOW UP FOR RENEWAL. UNTIL SUCH TIME WHEN A NEW PERMIT
IS ISSUED, NIGERIA AIRWAYS MAY CONTINUE TO CONDUCT FLIGHTS
INTO THE UNITED STATES AS BEFORE, PURSUANT TO THE ADMIN-
ISTRATIVE PRACTICES ACT.

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ISSUANCE OF FOREIGN AIR CARRIER PERMITS IS GOVERNED BY

SECTION 402 OF CIVIL AERONAUTICS BOARD'S ECONOMIC REGULATIONS. PROCEDURE REQUIRES PUBLIC EVIDENTIARY HEARINGS BEFORE AN ADMINISTRATIVE LAW JUDGE TO DETERMINE FITNESS AND

ABILITY OF AIRLINE TO PROVIDE SERVICE AND TO ESTABLISH WHETHER OWNERSHIP AND CONTROL OF AIRLINE IS VESTED IN CITIZENS OF FOREIGN COUNTRY IN QUESTION. ON BASIS OF EVIDENCE SUBMITTED AT HEARINGS AND UPON CONSIDERATION OF ADMINISTRATIVE LAW JUDGE FINDINGS, 5-MEMBER BOARD OF CAB MAKES RECOMMENDATION TO PRESIDENT THAT PERMIT SHOULD BE EITHER ISSUED OR DENIED. DECISION TO ISSUE PERMIT IS FINALLY MADE BY PRESIDENT WHEN ACTING ON BOARD'S RECOMMENDATION.

2. EMBASSY MAY WISH TO POINT OUT TO NIGERIANS, IF QUESTION IS RAISED BY THEM, THAT EXISTENCE OF A BILATERAL AIR TRANSPORT AGREEMENT WOULD NOT MATERIALLY AFFECT ABOVE OUTLINED PROCEDURES WHICH ARE MANDATED BY LAW.

3. FOREIGN AIR CARRIER PERMIT PROCEEDINGS ARE MANDATORY FOR ALL FOREIGN AIR CARRIERS CONDUCTING OPERATIONS IN THE US AND THEREFORE NO DISCRIMINATION AGAINST AIR NIGERIA IS INVOLVED. WHILE NIGERIAN OFFICIALS MAY HAVE BEEN INFORMED THAT BILATERAL WITH US WOULD RESULT IF PERMIT OF INDEFINITE DURATION THIS MAY NOT BE NECESSARILY THE CASE SINCE DECISIONS REGARDING PERMIT DURATION ARE MADE IN LIGHT OF INDIVIDUAL CIRCUMSTANCES.

4. PRE-HEARING CONFERENCE TO DETERMINE WHAT NECESSARY EVIDENCE IS TO BE SUBMITTED WAS HELD IN WASHINGTON ON JULY 22, 1975. AT REQUEST OF NIGERIA AIRWAYS NO DEFINITE DATE HAS BEEN SET FOR HEARINGS. KISSINGER

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